No. 16,056

In the

United States Court of Appeals

For the Ninth Circuit

MISS CLAUDIA WALKER,
Appellant,

vs.

BANK OF AMERICA NATIONAL TRUST AND SAVINGS ASSOCIATION and TRANSAMERICA CORPORATION,
Appellees.

On Appeal from the Judgment of the United States District Court for the Northern District of California

Brief of Appellee Bank of America National Trust and Savings Association

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Opinion Below

There is no reported opinion of the District Court; however, the opinion of the Court is fully stated in the Memorandum and Order dated January 28, 1958, dismissing the action (Record on Appeal, hereinafter designated R., Doc. 20).

I.

Statement as to Jurisdiction

1. The District Court did not have jurisdiction and hence the dismissal of the action was proper.

2. This Court lacks jurisdiction because (a) the notice of appeal to the principal order appealed from was filed too late as to Appellee Bank and (b) the other orders appealed from were not final.

1. THE DISTRICT COURT DID NOT HAVE JURISDICTION AND HENCE THE DISMISSAL OF THE ACTION WAS PROPER.

The principal order appealed from and the only possible final order is the Memorandum and Order of the District Court dated January 28, 1958 dismissing the action (R. Doc. 20), and the sole question involved is whether or not the District Court had jurisdiction. Since this question represents the principal issue in this case on appeal (if this court has jurisdiction as to Appellee Bank), it is considered hereinafter under Argument.

2. THIS COURT LACKS JURISDICTION BECAUSE (A) THE NOTICE OF APPEAL TO THE PRINCIPAL ORDER APPEALED FROM WAS FILED TOO LATE AS TO APPELLEE BANK AND (B) THE OTHER ORDERS APPEALED FROM WERE NOT FINAL.

The principal order appealed from is that entitled "Memorandum and Order" dated January 28, 1958, based on defendants' Motion to Dismiss for Lack of Jurisdiction. Thus the normal time for filing a Notice of Appeal would expire after thirty days, i.e., on February 27, 1958 [Rule 73(a)] unless otherwise extended. The Notice of Appeal was actually not filed until May 16, 1958.

The time in which a notice of appeal may be filed may of course be extended by the filing of a motion under the provisions of Rule 50(b) granting or denying a motion for judgment; or 52(b) to amend or make additional findings of fact; or Rule 59 to alter or amend the judgment or as

to a new trial. [Rule 73(a)]. Such motions must be made within ten days from the order at which such motions are directed. The only subsequent motion filed by Appellant that would appear to be possibly within this category and time is the motion entitled "Motion to Set Aside Order of Dismissal and for Leave to File Amended Complaint" filed on February 7, 1958. Assuming for the sake of argument that this motion falls within the classification specified in Rule 59(e) as a motion to alter or amend a judgment, it should be observed that this motion relates only to Transamerica Corporation and not to Appellee Bank of America National Trust and Savings Association. Indeed to effectuate the end sought by Appellant in this motion it was necessary that the action remain dismissed as to Appellee bank. The whole purpose of this motion was to avoid the jurisdictional difficulty inherent because Appellee bank was a party and to direct the action solely against Transamerica Corporation since in this manner jurisdiction in the District Court could be obtained. Appellee bank was not a party to this motion. It seems clear then that in so far as Appellee bank is concerned, no motion was filed which affected it within ten days from January 28, 1958. Thus the conclusion is that as to Appellee bank the Notice of Appeal was filed too late.

This motion to set aside the dismissal and to file an amended complaint was in any event denied under a Memorandum and Order dated and filed April 18, 1958. (R. Doc. 22) Although plaintiff has designated this particular order as appealed from in her Notice of Appeal, it appears clearly that this order is of a procedural nature and not a final order subject to appeal under the provisions of 28 USC 1291.

In so far as the motion was an effort to set aside the dismissal, the language of this court in *Hicks v. Bekins Mov-*

I.

Statement as to Jurisdiction

1. The District Court did not have jurisdiction and hence the dismissal of the action was proper.

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In so far as the motion was an effort to set aside the dismissal, the language of this court in *Hicks v. Bekins Mov-*

ing & Storage Co., 115 F.2d 406, 409 (9th Cir. 1940) appears to be apposite and is as follows:

> "On the attempted appeal from the order of the court below denying plaintiff's motion to vacate the order of dismissal, it is to be observed that, save in certain instances or exceptions not now material, this court has the jurisdiction to review only final decisions. 28 U.S.C.A. § 225. An order of dismissal is a final judgment from which an appeal will lie. Colorado Eastern Ry. Co. v. Union Pac. Ry. Co., supra; Wilson v. Republic Iron & Steel Co., et al., 257 U.S. 92, 96, 42 S.Ct. 35, 66 L.Ed. 144. But an order denying a motion to vacate an order of dismissal is not such a final order for it is 'The general rule is that no appeal will lie from an order denying a motion to vacate or modify a judgment, decree, or order [Cases cited.]' Republic Supply Co. of Calif. v. Richfield Oil Co. of Calif., 9 Cir., 74 F.2d 909, 910. See also Bensen v. United States, 9 Cir., 93 F.2d 749. In the circumstances, therefore, we have no alternative but to dismiss the appeal in No. 9510."

See also *Simons v. United States,* 162 F.2d 905 (9th Cir. 1947)

Again an order denying leave to file an amended complaint is not an appealable order. *Kulesza v. Blair,* 41 F.2d 439 (7th Cir. 1930) Cert. den. 282 U.S. 883. Although the case involved the question of amending an answer, the logic as to the question of appealability would be the same and this court has held that an order denying leave to file an amendment to an answer is not a final order and thus not appealable. *Hancock Oil Co. v. Universal Oil Products Co.,* 120 F.2d 959 (9th Cir. 1941) Cert. den. 314 U.S. 666.

Appellant has also appealed from the Amendment to Memorandum and Order dated and filed May 7, 1958 (R. Doc. 30) in response to Appellant's Motion to Amend the

Order of April 18, 1958. Once again it is apparent from the cases already cited that this Order is of a procedural and corrective nature and not final in the sense of being appealable.

The next order specifically appealed from is the Memorandum and Order dated May 12, 1958, and filed May 13, 1958 (R. Doc. 34), in response to Appellant's earlier "Motion for Relief from Order under Rule 60(b) [newly discovered evidence]." (R. Doc. 31) This motion was recognized by the court as being a procedural impossibility under the facts of this case. In this connection the District Court stated: (R. Doc. 34, p. 2)

> "The plaintiff has stated in the document now before the Court that she will move for relief from the aforementioned orders under the provisions of Rule 60(b) Federal Rules of Civil Procedure 'on the ground that plaintiff has discovered new evidence.' The rule reads as follows:
>
> "'On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: * * * (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); * * *'
>
> "There has never been a trial in this action, nor the introduction of any evidence; the matter was dismissed upon the state of the pleadings, from which it appears that the Court is without jurisdiction in the matter. Inasmuch as it is impossible for the plaintiff to move for a *new* trial, the document must be taken as something in the nature of a petition for a rehearing."

Since the circumstances which would permit a motion under Rule 60(b) did not exist the motion was either a nullity or to have standing would have to be treated as a motion for

rehearing. Considering the motion as essentially one for a rehearing and which challenges the correctness of the order of dismissal, its denial would not be an appealable order. In *United States v. Muschany,* 156 F.2d 196, 197 (8th Cir. 1946) the court said:

> "A timely motion which challenges the correctness of a judgment or order is intended to afford the trial court an opportunity to reconsider its action in entering the judgment and to amend it. The motion merely postpones the finality of the judgment and extends the time for appeal from the judgment. An appeal from the denial of such a motion is not an appeal, or the equivalent of an appeal, from the judgment or order the modification of which is sought. In re Schulte-United, Inc., 8 Cir., 59 F.2d 553, 559; State of Missouri v. Todd, 8 Cir., 122 F.2d 804, 806; Jones v. Thompson, 8 Cir., 128 F.2d 888, 889; Brown v. Thompson, 8 Cir., 150 F.2d 171, 172-173. The appeal lies from the final judgment or order challenged by the motion, and not from the District Court's refusal to modify it. Pfister v. Northern Illinois Finance Corp., 317 U.S. 144, 149, 150 63 S.Ct. 133, 87 L.Ed. 146; Bowman v. Loperena, 311 U.S. 262, 266, 61 S.Ct. 201, 85 L.Ed. 177; Wayne United Gas Co. v. Owens-Illinois Glass Co., 300 U.S. 131, 137, 57 S.Ct. 382, 81 L.Ed. 557; Conboy v. First National Bank of Jersey City, 203 U.S. 141, 145, 27 S.Ct. 50, 51 L.Ed. 128; Alexander v. Special School District of Booneville, 8 Cir., 132 F.2d 355, 358; Brown v. Thompson, supra, 150 F.2d 171, pages 172-173."

The last Memorandum and Order appealed from dated and filed on May 19, 1958 (R. Doc. 38), was a denial of the last motion made by Appellant based on Rule 60(b) [fraud]. It is true that in certain situations the courts have considered the denial of a motion based upon fraud as an appealable order on the theory that there was in effect an

independent action arising out of the fraud; however, such facts do not appear in this case. The only so called fraud alleged, as indicated by the affidavit of appellant filed in support of her motion, is stated as follows:

> "That on January 16, 1956, or on the actual date of the hearing of defendants' motions to dismiss filed in the above cause, which admitted and conceded all of the facts of plaintiff's complaint to be true, George Chadwick, Jr. in the presence of this plaintiff, and affiant, told the above entitled court that 'if all of the facts stated by plaintiff were admitted to be true, this would be of no benefit to plaintiff.' " (R. Doc. 35, p. 2 of attached affidavit)

A simple reading of the above is sufficient to indicate that what has been termed fraud is no fraud at all. The quoted statement made in connection with the argument on the motion to dismiss was of course entirely true since, as found by the District Court and as hereinafter indicated in the Argument, Appellant had not stated a cause of action within the jurisdiction of the District Court. A statement by counsel of the theory upon which he is proceeding is certainly not fraud in any sense of the word.

In conclusion as to the jurisdiction of this court on this appeal it may be said:

> (a) As to the order of January 28, 1958, the notice of appeal as to Appellee bank was filed too late.
>
> (b) The other orders appealed from were not final orders under 28 USC 1291.

It is therefore submitted that the sole jurisdiction of this court is to dismiss this appeal in so far as Appellee bank is concerned.

II.

Statement of the Case

Appellant filed in the District Court a Complaint naming Appellee bank and Transamerica Corporation as defendants. This Complaint charged Appellees with mistreatment of the Appellant as an employee and also charged Appellee bank with violation of the national banking laws.

Appellees moved to dismiss the Complaint because of lack of jurisdiction in the District Court and this Motion was granted by the District Court (Memorandum and Order of January 28, 1958) on the grounds that there was no diversity of citizenship and no federal question.

Subsequent to the Memorandum and Order of January 28, 1958, Appellant filed four motions all of which were attacks in one way or another on the order dismissing the action. (See foregoing statement as to jurisdiction for an indication of the nature of each motion). Except in a single instance where the District Court substituted certain language for that used in a prior order, all of Appellant's motions were denied by the District Court and Appellant has appealed from the order of dismissal of January 28, 1958, and from all of the subsequent orders denying Appellant's motions.

III.

Argument

Assuming for the purposes of argument that this court has jurisdiction as to Appellee bank to hear this appeal, there appears to be no question but that the District Court was correct in dismissing the action based upon a lack of diversity of citizenship and failure to state a federal question.

(1) THE QUESTION AS TO DIVERSITY OF CITIZENSHIP.

It is clear that for the purposes of jurisdiction in the federal courts a national bank is considered to be a citizen of the state wherein it is located. Both Appellant and Appellee bank are citizens of California. Appellant has called attention to 12 USC 94 which is primarily a venue statute, but has ignored 28 USC 1348 which reads as follows:

> "The district courts shall have original jurisdiction of any civil action commenced by the United States, or by direction of any officer thereof, against any national banking association, any civil action to wind up the affairs of any such association, and any action by a banking association established in the district for which the court is held, under chapter 2 of Title 12, to enjoin the Comptroller of the Currency, or any receiver acting under his direction, as provided by such chapter.
>
> "All national banking associations shall, for the purposes of all other actions by or against them, be deemed citizens of the States in which they are respectively located."

The language of the District Court in its Memorandum and Order of January 28, 1958, covers this situation so well that it is quoted herein: (R. Doc. 20, p. 3)

> "It is a fundamental rule in the federal courts that where jurisdiction is claimed to arise from diversity of citizenship of the parties and there are several parties plaintiff or defendant, and the parties on the same side are citizens of different states, that all parties on the same side must be capable of suing or being sued within the district where the action is brought. In this case, each defendant must be liable to suit in this Court; otherwise, the controversy would not be among citizens of different states. See: *Shainwald v. Lewis,* 108 U.S. 158, 2 S.Ct. 385, 7 L.Ed. 691; *Sewing Machine Co's Case,* 18 Wall. 553, 21 L.Ed. 914; *Sweeney v. Carter Oil Co.,* 199 U.S. 252, 26 S.Ct. 55, 50 L.Ed. 158.

"Plaintiff has urged that defendant Bank of America is a 'subsidiary', 'a mere instrumentality' of defendant Transamerica, that Transamerica is 'the real party defendant', and has asked that the Court ignore the Bank of America as a legal entity. Disregarding the question of whether the doctrine of the law of Corporations known as 'Alter Ego' or 'Piercing the Corporate Veil' will apply equally well to an unincorporated banking association as to a corporation, there are not sufficient allegations in any of plaintiff's pleadings to suggest that the Bank of America is not an identifiable and separate legal entity, nor that the Court would be justified in submerging the identity of Bank of America within that of Transamerica. Indeed, inasmuch as plaintiff has named the Bank of America as a party defendant in her action, there is no need for the Court to make such a finding as she proposes. The Court will not base jurisdiction upon the ground that one of the named defendants is no defendant at all.

"It follows that inasmuch as there is no diversity of citizenship between plaintiff and defendant Bank of America, the Court has no discretion in the matter, and finds that it has no jurisdiction over the controversy on the basis of diversity of citizenship of the parties."

(2) THE QUESTION OF WHETHER A FEDERAL QUESTION EXISTS.

(a) The Civil Rights Statute as a basis for jurisdiction.

Once again the statement by the District Court in its Memorandum and Order of January 28, 1958, appears to consider and answer this question fully. The pertinent portion of the Memorandum follows (R. Doc. 20, p. 4)

"Plaintiff has alleged that the jurisdiction of the Court may be found in 42 U.S.C.A. § 1985(3), a section of the Civil Rights statutes concerning conspiracies which deprive individuals of the several rights and privileges which they enjoy as citizens of the United States of America. Although the statute was originally

intended by Congress as a protection and guaranty of equality under the law for the members of the various races, subsequent interpretation of the enactment has brought under its aegis all of those groups and classes which conform to the necessary standards of 'reasonable classification' within the national social structure. The statute protects the individual against a conspiracy designed to deprive him of the equal protection of the laws, or of equal privileges and immunities under the laws; it is not a catch-all omnibus which authorizes the recovery of damages from one individual for his trespass against another; rather, it is directed toward any state action or any act which is done under 'color of state law.' See: *Collins v. Hardyman*, 341 U.S. 651, 71 S. Ct. 937, 95 L. Ed. 1253. Although plaintiff has included the phrase—'under color of state law'—within her pleadings, there is no showing that the defendants acted in other than individual capacities. Making representations to a state official, even in a report required by law, is not acting 'under color of law' within the Civil Rights statutes. *Schatte v. Int'l. All. of Theatrical Stage Employees & Moving Picture Operators of U. S. & Canada*, 182 F.2d 158, re. den. 183 F.2d 685, Cert. den. 340 U.S. 827, 71 S. Ct. 64, 95 L. Ed. 608, re. den. 340 U.S. 885, 71 S. Ct. 194, 95 L. Ed. 643.

"In a recent Alabama case in the Federal Court, a plaintiff complained that the defendants had conspired to and did, cause her to be declared insane by an Alabama Probate Court when she was in fact sane, caused her to be confined and denied her a right to be heard. The facts are remarkably similar to those alleged by plaintiff Claudia Waller Walker. Plaintiff in the Alabama case then filed suit in the United States District Court and claimed that she was entitled to relief under the same Civil Rights statute. The Court stated:

" 'That section (referring to 42 U.S.C.A. § 1985 [3]), so far as here material, does not attempt to reach a

"Plaintiff has urged that defendant Bank of America is a 'subsidiary', 'a mere instrumentality' of defendant Transamerica, that Transamerica is 'the real party defendant', and has asked that the Court ignore the Bank of America as a legal entity. Disregarding the question of whether the doctrine of the law of Corporations known as 'Alter Ego' or 'Piercing the Corporate Veil' will apply equally well to an unincorporated banking association as to a corporation, there are not sufficient allegations in any of plaintiff's pleadings to suggest that the Bank of America is not an identifiable and separate legal entity, nor that the Court would be justified in submerging the identity of Bank of America within that of Transamerica. Indeed, inasmuch as plaintiff has named the Bank of America as a party defendant in her action, there is no need for the Court to make such a finding as she proposes. The Court will not base jurisdiction upon the ground that one of the named defendants is no defendant at all.

"It follows that inasmuch as there is no diversity of citizenship between plaintiff and defendant Bank of America, the Court has no discretion in the matter, and finds that it has no jurisdiction over the controversy on the basis of diversity of citizenship of the parties."

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" 'That section (referring to 42 U.S.C.A. § 1985 [3]), so far as here material, does not attempt to reach a

conspiracy to deprive one of civil rights unless its object is a deprivation of equality,—of "equal protection of the laws," or "equal privileges and immunities under the laws". (Citing *Collins v. Hardyman, supra*). It does not purport to create a cause of action for conspiracies to deny due process. Yet the burden of the conspiracy count is, not that the defendants conspired to deny plaintiff equality under the law, but that they conspired to deprive plaintiff of her liberty without due process. The two propositions are quite distinct. They are not equivalents. (Citing cases). No facts are pleaded which show that plaintiff has been subjected to any inequality of treatment. There is no charge that by said proceedings she has been subjected to any different or greater hazard than any other person against whom the Alabama statutes might be invoked, nor that she was deprived of any right or immunity which might be enjoyed by any other person under the law. It is clear that the conspiracy counts state no cause of action under 8 U.S.C.A. § 47(3).' *Whittington v. Johnston,* 201 F. 2d 810 (U.S.C.A. 5th 1953) cert. den. 346 U.S. 867, 74 S.Ct. 103, 98 L. Ed. 377."

"In the case before the Court, plaintiff's plethoric pleadings are filled with conclusions of law and irrelevant evidentiary matter, the substance of which is that she has been denied due process of law, rather than that she was denied the protection which is within the purview of the statute; nowhere has she alleged ultimate facts which are sufficient to state a claim for relief. Inasmuch as plaintiff's claim for relief as based upon 42 U.S.C.A. 1985(3) is without merit, the Court is without jurisdiction in the matter."

(b) Alleged violation of national banking laws.

Inherent in Appellant's contentions appears to be the thought that her allegations of infractions of the national

banking laws provides a basis for jurisdiction when the Comptroller has failed to act. However by statute actions in this area may only be maintained by the Comptroller of the Currency and his action or nonaction would not appear to support the jurisdiction of the District Court as to an action by an individual. 12 USC 93 reads as follows:

> "If the directors of any national banking association shall knowingly violate, or knowingly permit any of the officers, agents, or servants of the association to violate any of the provisions of this Title, all the rights, privileges, and franchises of the association shall be thereby forfeited. *Such violation shall, however, be determined and adjudged by a proper circuit, district or Territorial court of the United States, in a suit brought for that purpose by the Comptroller of the Currency, in his own name,* before the association shall be declared dissolved. And in cases of such violation every director who participated in or assented to the same shall be held liable in his personal and individual capacity for all damage which the association, its shareholders, or any other person, shall have sustained in consequence of such violation." (Emphasis supplied)

In so far as actions by individuals are concerned, the above statute only authorizes actions against directors of the national bank involved. It would appear that this particular statute has no relevancy at all to support the claim of Appellant that the District Court had jurisdiction as to Appellee bank.

(c) The Fair Labor Standards Act.

Although the point is new and does not appear to be based upon the record in this case, Appellant, nevertheless, beginning at Page 29 of her brief, suggests that the District Court had jurisdiction under the Fair Labor Standards

conspiracy to deprive one of civil rights unless its object is a deprivation of equality,—of "equal protection of the laws," or "equal privileges and immunities under the laws". (Citing *Collins v. Hardyman, supra*). It does not purport to create a cause of action for conspiracies to deny due process. Yet the burden of the conspiracy count is, not that the defendants conspired to deny plaintiff equality under the law, but that they conspired to deprive plaintiff of her liberty without due process. The two propositions are quite distinct. They are not equivalents. (Citing cases). No facts are pleaded which show that plaintiff has been subjected to any inequality of treatment. There is no charge that by said proceedings she has been subjected to any different or greater hazard than any other person against whom the Alabama statutes might be invoked, nor that she was deprived of any right or immunity which might be enjoyed by any other person under the law. It is clear that the conspiracy counts state no cause of action under 8 U.S.C.A. § 47(3).' *Whittington v. Johnston,* 201 F. 2d 810 (U.S.C.A. 5th 1953) cert. den. 346 U.S. 867, 74 S.Ct. 103, 98 L. Ed. 377."

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Inherent in Appellant's contentions appears to be the thought that her allegations of infractions of the national

banking laws provides a basis for jurisdiction when the Comptroller has failed to act. However by statute actions in this area may only be maintained by the Comptroller of the Currency and his action or nonaction would not appear to support the jurisdiction of the District Court as to an action by an individual. 12 USC 93 reads as follows:

> "If the directors of any national banking association shall knowingly violate, or knowingly permit any of the officers, agents, or servants of the association to violate any of the provisions of this Title, all the rights, privileges, and franchises of the association shall be thereby forfeited. *Such violation shall, however, be determined and adjudged by a proper circuit, district or Territorial court of the United States, in a suit brought for that purpose by the Comptroller of the Currency, in his own name,* before the association shall be declared dissolved. And in cases of such violation every director who participated in or assented to the same shall be held liable in his personal and individual capacity for all damage which the association, its shareholders, or any other person, shall have sustained in consequence of such violation." (Emphasis supplied)

In so far as actions by individuals are concerned, the above statute only authorizes actions against directors of the national bank involved. It would appear that this particular statute has no relevancy at all to support the claim of Appellant that the District Court had jurisdiction as to Appellee bank.

(c) The Fair Labor Standards Act.

Although the point is new and does not appear to be based upon the record in this case, Appellant, nevertheless, beginning at Page 29 of her brief, suggests that the District Court had jurisdiction under the Fair Labor Standards

Act of 1938, 29 USC 201 et seq. as a result of employment in 1939. In this connection it appears that if Appellant ever had such a cause of action it is at the present time forever barred. It should be a sufficient answer to this contention to refer to 29 USC 255 which reads as follows:

> "§ *255. Statute of limitations*
>
> "Any action commenced on or after May 14, 1947, to enforce any cause of action for unpaid minimum wages, unpaid overtime compensation, or liquidated damages, under the Fair Labor Standards Act of 1938, as amended, the Walsh-Healey Act, or the Bacon-Davis Act—
>
> * * * * * * *
>
> "(b) if the cause of action accrued prior to May 14, 1947,—may be commenced within whichever of the following periods is the shorter; (1) two years after the cause of action accrued, or (2) the period prescribed by the applicable State statute of limitations; and, except as provided in paragraph (c) of this section, every such action shall be forever barred unless commenced within the shorter of such two periods;"

(3) APPELLANT'S SPECIFICATION OF ERRORS.

Although as indicated Appellant has appealed from five orders of the District Court there are only three specifications of errors and the only orders specifically referred to are the Memorandum and Order of January 28, 1958, and the Memorandum and Order of May 19, 1958 issued subsequently to the Notice of Appeal but included therein.

As to the first order, Appellant's position appears to be that she should have been permitted to amend her Complaint. The answer is, this matter rested in the discretion of the District Court, and in any event, as already indicated, the order denying is not an appealable order.

The assignment of error in relation to the Memorandum and Order of May 19, 1958 is again a restatement of Appellant's contention that in the absence of action by the Comptroller she herself has some form of action based on the national banking laws. There appears to be no support to this position and the point has already been covered in the Argument, supra.

Appellant's last assignment of error is to the effect that Appellees made their Motion to Dismiss too late. It is fundamental, and requires no citation of authority, that the question as to jurisdiction may be raised at any time.

IV.

Conclusion

Based upon the foregoing it appears that this court should either dismiss this appeal as to Appellee bank or affirm the Memorandum and Order of the District Court of January 28, 1958.

Dated: December 20, 1958.

Respectfully submitted,

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